

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1947 OF 2003

Engineering Mazdoor Sabha ... Petitioner
versus

1. The Additional Commissioner
of Labour, 7th floor,
Commerce Centre, Tardeo,
Mumbai - 400 034.
2. M/s. Cable Corporation of
India, Dattapada Road,
Borivli (E), Bombay - 400 066.
3. Shramik Utkarsha Sabha,
3/141, MHB Colony, Kher
Nagar, Bandra (E),
Bombay. ... Respondents

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Mr. J.P. Cama along with Mr. A. Shaikh i/by S.
Udeshi & Co., for the Petitioner.

Mr. K.K. Singhvi along with Mr. Soli Cooper and
Ms. Ethel Pereira i/by R.V. Paranjpe, for
Respondent No. 2.

Mr. S.J. Chaurasia, for Respondent No. 3.

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CORAM : A.M.KHANWILKAR, J.

2nd August 2004

ORAL JUDGMENT :

. This writ petition takes exception to the decision of the Additional Commissioner of Labour, Mumbai and Specified Authority under section 25N of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act") dated 29th April 2003 and 9th July 2003 respectively. By order dated 29th April 2003, the said authority partly allowed the application preferred by the Respondent Company for seeking permission to retrench 284 workmen out of 509 workmen of in its Borivli Unit only to the extent of 276 workmen on the conditions stated in the order. The correctness of that decision was put in issue by the Petitioner Union, as well as Respondent No. 3 Union, which are the two Unions operating in the Borivli Unit of the Respondent Company by way of review as provided under section 25N(6) of the said Act. That review application came to be rejected by the second

order dated 9th July 2003. As mentioned earlier, the Respondent Company made application for permission to retrench 284 workmen out of total 509 workmen working at its Borivli Unit on 16th January 2003 under section 25N(1) of the said Act by complying necessary formalities and furnishing requisite information. The substance of the stand taken in this application is that due to unwieldy financial constraints, the Company has no option, but to rearrange its affairs, so as to meet with the liabilities of the outstanding dues and recurring expenses and to make the operation of Borivli Unit viable in all respects. The application was opposed by both the Unions. Insofar as the Petitioner Union is concerned, the stand taken in the reply filed on January 27, 2003 is that the proposed retrenchment was by way of victimisation on account of the fact that the workmen on and from 30th November 2002 have decided to become members of the Petitioner Union and have given up their membership of Respondent No. 3 Union, which was functioning hand in glove with the management to enable the management to do away with the services of workmen and ultimately close down the establishment. It is

stated that the Petitioner Union had already applied for cancellation of recognition of Respondent No. 3 Union. Besides, complaints regarding unfair labour practices were instituted and pending. In other words, the case of the Petitioner Union was that the proposed retrenchment was only by way of victimisation for trade union activities. Besides, the Petitioner asserted that the reasons given by the Company for seeking retrenchment permission were neither genuine nor real and that the same were, in any case, not adequate. It was also asserted that the proposed retrenchment was against the interest of the workmen and the public at large. It was also urged that the Company has suppressed material particulars and made misstatements, for which reason the application as filed deserves to be rejected. It was also stated that the proposal for retrenchment was clearly in violation of section 25G of the said Act, as several juniors have been retained, whereas seniors were sought to be retrenched without any reason whatsoever. It was stated that the Company was maintaining common balance sheet and profit and loss account in respect of Borivli

Unit as well as Nasik Unit. It was contended that the Company has not proposed any action against 102 workmen and about 55 employees in managerial category at Nasik Unit for voluntary retirement scheme in last three years, nor any steps have been taken for reduction of staff of that plant. On the other hand, the Company has paid bonus to its employees in Nasik Unit. It was further stated that the real intention of the Company was to enter into joint development agreement with several builders for developing plots of the factory establishment at Borivli Unit into a non-industrial establishment and residential units and make huge profits at the cost of the employees. It was further stated that the fact that above 600 employees have already been relieved by way of V.R.S. or by superannuation and/or death of the employee and no replacements have been made against which the Company has saved substantial amount to the extent of 9 crores of rupees per annum, which information though relevant, has been suppressed. It is further stated that the alleged steps taken by the Company to reduce costs does not mention any V.R.S. or sale of assets. It was further

contended that the purpose of proposed retrenchment was on account of the rationalisation, standardisation and restructuring attempt made by the Company and that course could be adopted only upon compliance of prior notice under section 9A of the said Act. In substance, the objection taken on behalf of the Petitioner was that the smoke-screen of financial constraints projected by the Company will have to be lifted, upon which it will be noticed that there was no genuine need for retrenchment.

2. After the parties exchanged pleadings and filed submissions, the Additional Commissioner upon consideration of the materials placed on record proceeded to partly allow the application preferred by the Company as mentioned earlier. The Additional Commissioner has adverted to all the materials produced on record and also the contentions raised on behalf of the parties and after analysing the same has accepted the case of the Company while partly allowing the application for granting permission only in respect of 276 workmen.

3. Against the said decision, the Petitioner filed application purported to be under section 25N(6) of the said Act for review of the decision or to refer the matter for adjudication. That application has been rejected on the ground that such application could be preferred only by the workmen, whereas the same was made by two different Unions. Besides, it observed that no new point was raised in the review proceedings, which warranted examination. Accordingly, the said application preferred by the Petitioner for review/reference came to be rejected. Against the aforesaid decisions, present writ petition has been filed.

4. Mr. Cama for the Petitioner Union contends that the entire action is vitiated because it has been resorted only to victimise the members of the Petitioner Union. It is submitted that on the one hand on the basis of settlement arrived at in the past, the applications preferred by the employees for availing of the V.R.S. were kept pending; and, at the same time, recourse was being taken to

remedy of retrenchment under section 25N of the said Act, which course was impermissible. He further contends that, in any case, the reasons indicated on behalf of the Company are neither genuine nor adequate. As such, the application ought to have been rejected by the authority in toto. He further submits that, in any case, the decision of the authority to partly allow the application to the extent of 276 workmen is clearly against the interest of the workmen. He submits that such permission could be granted only if the Company was to establish the fact that it was impossible for the Company to continue with the present disposition any further and not otherwise. In other words, the correctness of the first order passed by the authority is put in issue on behalf of the Petitioner. It is further submitted that, in any case, the authority has failed to exercise jurisdiction vested in it in rejecting the review/reference application preferred on behalf of the Petitioner. It is submitted that from the decision in the review/reference application, it can be discerned that only two reasons weighed with the authority for rejecting the same. The

first seems to be that the Union had no locus to maintain the application under section 25N(6) of the Act; and the second being that no new point was made out. It is submitted that each of those reasons are incorrect. It is then contended that in any case the authority ought to have made reference as was provided for by section 25N(6) of the Act, but the authority has not addressed itself to that aspect of the matter at all. On the above arguments, the learned Counsel submits that this petition should succeed. To buttress the above submissions, reliance is placed on the decisions of the Apex Court reported in A.I.R. 1976 S.C. 1455 in the case of The Mumbai Kamgar Sabha, Bombay v. M/s. Abdulbhai Faizullabhai and others, to contend that when the application was filed by the Union, it is obviously expression of the totality of the workmen involved in the dispute for reasons of expediency and each workman was not required to be made party in the application. Reliance is then placed on 1992 I CLR 1010 (S.C.) in the case of Workmen of Meenakshi Mills Ltd. Etc. v. Meenakshi Mills Ltd. & Anr., to contend that the authority has failed to apply the minimum test

required for considering the application under section 25N of the said Act. Reliance is also placed on another decision of the Constitution Bench of the Apex Court reported in 2002 I CLR 831 in the case of Orissa Textile & Steel Ltd. v. State of Orissa and ors., to contend that it is only when it was impossible for the management that the request for proposed retrenchment could be considered. This decision is also pressed into service to contend that it is obligatory on the authority to bear in mind the interest of the workmen concerned and of general public. Reliance is also placed on the decision of Division Bench of the Gujarat High Court reported in 1995 II CLR 683 in the case of Rajya General Kamgar Mandal & Ors. v. Vice President, Packart Press, Div. Ambalal Sarabhai Enterprises, Baroda & Ors., to contend that even if the authority did not think it necessary to interfere with the request for review of the order according permission for the proposed retrenchment, even in that case, it was necessary for the authority to make reference to the appropriate Government to refer the matter for adjudication.

5. On the other hand, Mr. Singhvi, for the Respondents, submits that no fault can be found either with the decision reached by the authority in according permission for retrenchment of 276 workmen for the reasons recorded in the first order or for refusing to review that order on the ground of locus of the Petitioner, or, for that matter, in not making reference, once having rejected the request for review. He submits that in the pleadings filed before the authority, no foundation has been laid. Relying on the observations of the Apex Court in A.I.R. 1962 S.C. 630 in the case of Union of India v. Pandurang Kashinath More, learned Counsel contends that the grievance on behalf of the Petitioner cannot be entertained. He further submits that the authority has not only examined all the relevant materials on record as well as the submissions advanced before it, but, upon analysing the same, has rightly taken the view, which was a possible view; and merely because, another view can be reached on the same materials, this Court ought not to interfere in exercise of writ jurisdiction. He submits that the finding recorded by the authority below upon

analysing the materials on record is binding on this Court and it is not open to this Court to take a different view of the matter on the basis of the said materials. He further submits that in enquiry such as the present one, the authority was not required to make elaborate judicial or quasi-judicial enquiry. To support this proposition, reliance is placed on the decision of Division Bench of this Court in 1986 II L.L.J. 113 in the case of Maharashtra General Kamgar Union v. The State of Maharashtra. Reliance is also placed on an unreported decision of Division Bench of our High Court in Writ Petition No. 2093 of 1996, dated December 9, 1996 in the case of Blue Star Ltd. v. All India Blue Star Employees Federation and another, wherein this Court has taken the view that the Tribunal is not expected to adopt a long drawn process of reasoning or argument to substantiate its finding (see para 8). He submits that the grievance of the Petitioner that the authority has not elaborately analysed each aspect of the matter, as is expected of any Court, cannot be sustained, but this Court will have to broadly examine the approach of the authority and, if no fault can be

found with the approach, this Court ought to be loath to interfere in exercise of writ jurisdiction. He submits that the findings reached by the authorities below can neither be said to be perverse or founded on extraneous considerations, but the same are supported by materials on record and some mistake here or there cannot be the basis for interference in exercise of writ jurisdiction. He submits that the record would clearly establish the position that Company was making huge losses in respect of Borivli Unit and that position is reinforced from the report of financial expert, which, by itself, is sufficient to sustain the impugned decision. He submits that the documents, which were produced before the authority by the Company, the correctness whereof was not put in issue at all, and going by those documents, no fault can be found with the ultimate conclusion reached by the authority below. He further submits that the argument canvassed on behalf of the Petitioner that on the one hand, applications filed by the workmen for availing of V.R.S. were kept pending, and on the other hand, recourse was taken to remedy of retrenchment of those workmen

is devoid of merits. He has demonstrated from the materials on record that originally, retrenchment of 284 workmen was prayed for on behalf of the Company; however, when the Company realised that names of 8 persons, who had applied under V.R.S., were overlapping, the claim against those persons was not pressed and which is why the final permission granted by the authority is restricted to 276 workmen. In other words, it is contended that not even a single workman out of 276 workmen would fall in the category of workmen, who had not withdrawn his application for V.R.S. On the above arguments, Mr. Singhvi contends that no fault can be found with the conclusion reached by the authority in the first order. Even the subsequent order passed on review/reference application, contends Mr. Singhvi, is unexceptionable. He has supported the reason recorded by the authority that the Petitioner Union had no locus. He, however, submits that assuming that the Petitioner Union can maintain the application under section 25N(6) of the Act, even so, there is no error in the opinion expressed by the authority that no new point was raised in the review application. He

further submits that as the authority declined to entertain the review application, it was not open to the authority to make reference, because both the remedies were alternative to one another. To support this contention, reliance is placed on the decision of the Division Bench of Madhya Pradesh High Court reported in 1999 Lab.I.C. 497 Ujjain Mill Mazdoor Sangh and others v. State of M.P. and 2 others. In that decision, the Madhya Pradesh High Court has taken a view that the remedies are optional for the Government to either review the order of granting or refusing the permission for closure or to refer the matter to the Tribunal for adjudication. On the above arguments, learned Counsel submits that this writ petition is devoid of merits and the same be dismissed.

6. After going through the materials on record and the oral arguments canvassed across the Bar, the first aspect that needs to be addressed is whether the application preferred on behalf of the Company was appropriate and more so the scope of enquiry into such application. It is seen that the application as filed on behalf

of the Respondent Company conforms to the requirements of law. It has furnished all the necessary information in support of its claim that the Company was facing huge losses and had financial constraints, which necessitated the Company to take recourse to proposed retrenchment of workmen. The application and the accompanying record therewith not only gives the graphic description of the financial position of the Company, but it also gives details of the plans already executed and to be executed in future, as adopted by the Company, so as to overcome the staggering deficit or losses suffered by the Company in respect of Borivli Unit. The fact that the Company was maintaining common balance sheet and profit and loss account in respect of Borivli Unit and Nasik Unit will be of no avail. Inasmuch as, the Company was entitled to examine the prospects of each of its Unit on its own merits to remedy the obtaining situation. In respect of Borivli Unit, the Company has taken certain measures and policy decision and to make the same meaningful, one of the course adopted by the Company was to retrench some of the workmen out of total 509 workmen. Viewed in this

perspective, the remedy invoked by the Company cannot be discredited or said to be impermissible. Much stress was placed on the fact that no action has been taken in respect of workmen in the Nasik Unit. It is not in dispute that Nasik Unit is not running into losses, as is the case of Borivli Unit. Moreover, both the Units, being independent of each other, merely because no V.R.S. was introduced for last three years in Nasik Unit cannot be the basis to non-suit the Respondent Company for the remedy under section 25N of the said Act with regard to Borivli Unit.

7. The next question is whether the authority below has inquired into the matter keeping in mind all the relevant requirements of the scope of inquiry under section 25N of the said Act. The nature of inquiry to be undertaken in the proceedings, such as the present one, has already been expounded by the Apex Court in the case of Workmen of Meenakshi Mills Ltd. (supra). In para 30 of the said decision, it is observed that before passing order on such application, the appropriate Government or the authority will

have to ascertain whether the information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary; and if necessary, to what extent and for that purpose, it would be necessary for the appropriate Government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. In the present case, both the parties have adduced materials before the authority before the final decision is reached. The authority has analysed these materials as can be seen from the discussion in the decision reached by the authority. The correctness of the financial position of the Respondent Company, which is the basis for invoking remedy under section 25N of the said Act has not been questioned. In any case, the record regarding financial position produced on behalf of the Respondent Company is reinforced by the report submitted by the expert. The authority has, therefore, accepted the fact that for the last 4 years, the Respondent Company has accumulated losses approximately to the extent of Rs. 98

crores. Besides, the Company was liable to pay substantial amount to financial institutions. It has also been noted that the factory has remained closed from 30th November 2002 and no production has been made since then, which has additionally resulted in Company incurring heavy losses. In other words, the authority has plainly accepted the case made out by the Respondent Company, though has not used the expression 'correct' in the course of discussion. The authority has thereafter, on analysing the materials, accepted the case of the Respondent Company that retrenchment of 276 workmen will be necessary and, therefore, proceeded to partly allow the application preferred by the Respondent Company for retrenchment of only 276 workmen in Borivli Unit. Understood thus, to my mind, no fault can be found with the approach of the authority or with the conclusion reached on the basis of materials available on record of the authority. To my mind, the finding reached by the authority is neither perverse nor manifestly wrong. Rather, it is founded on the information, which can be discerned from materials on record. If it is so, following the observations made by this

Court in the case of Blue Star Ltd. (supra), no interference in exercise of writ jurisdiction will be warranted as the authority is not expected to adopt a long drawn process of reasoning or arguments to substantiate its findings.

8. It was vehemently argued by the Counsel for the Union that the decision of the authority is not in the interest of the concerned workmen. Even this grievance does not commend to me. The authority has rightly considered that only the interest of the outgoing workmen cannot be kept in mind, but the interest of the workmen who would continue in the Borivli Unit was of equal significance. This approach is consistent with the exposition of the Apex Court in Meenakshi Mills' case (supra) See para 48 thereof. The next argument that the permission granted for retrenchment of 276 workmen is not in the interest of the general public is also devoid of merits. The requirement of interest of general public has to be kept in mind essentially in respect of claim for closing down the undertaking under Section 250 of the Act; whereas the

requirement of section 25N is merely to examine the genuineness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors. The expression "interest of the general public" is conspicuously absent in section 25N(3), unlike expressly specified in section 250(2) of the Act. Counsel for the Petitioner Union, however, contends that the Apex Court in Orissa Textile Mills case (supra) observed that same principles as apply to section 250 of the Act would apply to cases of retrenchment of workmen under section 25N of the Act. Indeed, that observation has been made by the Apex Court, but that is a general observation made. In other words, in proceedings under section 25N of the Act, what is relevant is the interest of the workmen; and interest of the general public cannot be the determinative factor, because that is not the express requirement of section 25N(3) of the Act.

9. The next question that requires to be considered is whether the decision of the authority in review/reference application can be sustained. The scope of review is not spelt out

in sub-section (6) of section 25N of the said Act. Even so, the authority will be governed by the principles underlying O. 47, C.P.C. The Apex Court in the case of K. Ajit Babu and others v. Union of India and others, reported in 1997 II L.L.J. 749, in para 4, has observed that right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Indeed, that case was arising under the provisions of the Administrative Tribunals Act, 1985. In that context, the Court went on to observe that although strictly speaking, O. 47, C.P.C., may not be applicable to the Tribunals, but the principles contained therein surely have to be extended. Otherwise, there being no limitation on the powers of review, it would be an appeal and there would be no certainty or finality of a decision. Applying the same principle to the present legislation, the power of review invested under section 25N(6) of the said Act will have to be governed by the principles underlying O. 47, C.P.C. The first ground on which the review application has been

rejected is that the Petitioner Union had no locus and as all the aggrieved workmen were not made parties to the application. That reason cannot be sustained in the light of the exposition of the Apex Court in Mumbai Kamgar Sabha's case (supra). Similar contention was considered in paras 7 and 8 of the said decision in the following manner :

"7. Fairness to respondent's counsel constrains us to consider in limine a flawsome plea forcibly urged that the Union figured as the appellant before us but being no party to the dispute (which was between the workers on the one hand and the establishments on the other) had no locus standi. No right of the Union qua Union was involved and the real disputants were the workers. Surely, there is terminological lapse in the cause-title because, in fact, the aggrieved appellants are the workers collectively, not the Union. But a bare reading of the petition, the description of parties, the grounds urged and grievances aired, leaves us in no doubt that the battle is between the workers and employers and the Union represents, as a collective noun, as it were, the numerous humans whose presence is indubitable in the contest, though formally invisible on the party array. The substance of the matter is obvious and formal defects, in such circumstances, fade away. We are not dealing with a civil litigation governed by the Civil Procedure Code but with an industrial dispute where the process of conflict resolution is informal, rough and ready and invites a liberal approach.

Procedural prescriptions are handmaids, not mistresses, of justice and failure of fair play is the spirit in which Courts must view processual deviances. Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical mis-descriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a party. Where foul play is absent and fairness is not faulted, latitude is a grace of processual justice. Test litigations, representative actions, pro bono publico and like broadened forms of legal proceedings are in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by pass the real issues on the merits by suspect reliance on peripheral, procedural shortcomings. Even Art. 226, viewed in wider perspective, may be amenable to ventilation of collective or common grievances, as distinguished from assertion of individual rights, although the traditional view, backed by precedents, has opted for the narrower alternative. Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualisation of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjectival law. Therefore, the decisions cited before us founded on the jurisdiction under Art. 226 are inept and themselves somewhat out of tune with the modern requirements of jurisprudence calculated to benefit the community. Two rulings of this Court more or less endorse this

general approach : Dabholkar, (1976) 1
SCR 306 and Newabganj Sugar Mills, (1976)
1 SCC 120.

8. All this apart, we are dealing with an industrial dispute which in some respects, lends itself to more informality especially in the matter of Union representation. Technically, the Union cannot be the appellant, the workmen being the real parties. But the infelicity of drafting notwithstanding, the Union's role as merely representing the workers is made clear in the description of the parties. . . ."

10. The next reason which weighed with the authority in rejecting the review/reference application is that no new point was raised in the review application. So far as that reason is concerned, I am in agreement with the said opinion expressed by the authority, inasmuch as on fair reading of the impugned judgment, it is seen that points which were already canvassed while considering the original application have been raised at the review stage. Indeed, Mr. Cama strenuously argued that the review application is founded on entirely new grounds, which were not considered earlier. However, I am unable to accept that submission. More so, the review authority has reproduced the arguments which were canvassed before it and from the

submissions as noted in the impugned order, it is not possible to take the view that any new point was raised for consideration in the review application. Understood thus, no fault can be found with that decision of the authority in rejecting the review/reference application.

11. The next aspect that arises for consideration is whether the authority was obliged to make reference in the fact situation of the present case. It is seen that the application as filed by the Petitioner Union was one under section 25N(6) of the said Act, expressly mentioning the relief of review/reference. So far as rejection of that application to the extent of request of review of the original order is concerned, that needs no interference. However, the authority has not addressed itself to the alternative prayer of making reference though claimed by the Petitioner Union. According to the Respondent Company, once the review application is rejected, there was no question of making reference. To support this submission, reliance has been placed on the observations made by the Apex Court in the case

of Workmen of Meenakshi Mills Ltd. (supra). In the said case, in para 57, the Court has observed thus :

" . . . What remains to be considered is whether an industrial dispute can be raised and it can be referred for adjudication in a case where the appropriate Government has either granted permission for retrenchment or has refused such permission under Sub-s.(2) of S.25-N. Since there is no provision similar to that contained in Sub-s.(7) of S.25-N attaching finality to an order passed under Sub-s.(2), it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority specified by the appropriate Government and reference under S. 10 of the Act is also to be made by the appropriate Government. . . ."

Reliance is also placed on the decision of Division Bench of Madhya Pradesh High Court in the case of Ujjain Mill Mazdoor Sangh (supra). In para 5 of the said decision, the Division

Bench observed thus :

" A perusal of the provision shows that word 'may' occurring therein makes it optional for the Government to either review the order of granting or refusing permission for closure or to refer the matter to the Tribunal for adjudication. It is not mandatory for the Government to resort to both options simultaneously or one after the other. The word 'Or' assumes significance in this context. It may or may not resort to either option or may take one option. When it elects to take review option, that ends the matter. It cannot be then asked to take recourse to make reference to the Tribunal. . . . "

12. The argument as canvassed on behalf of the Respondent Company at the first blush seems to be attractive. However, on fair reading of the decision of the Apex Court, it is not possible to accept the submission that no reference is permissible once the review application is rejected. The observations made by the Apex Court, as reproduced above, cannot be pressed into service to support the extreme position taken on behalf of the Respondent Company that once the review application is rejected, remedy of reference is foreclosed. Insofar as the decision of Madhya Pradesh High Court is concerned, the observations will have to be understood in the context of fact situation of

that case. In that case, the Government allowed closure of the Company. Review petition against that decision was filed and thereafter writ petition came to be filed before the High Court for quashing the order and for consideration of review application by the Government or to require it to refer the matter to the Tribunal for adjudication in terms of section 250(5) of the Act. That writ petition was disposed of by recording the submission of the Counsel for the writ petitioner that the petitioner only prays for a direction that the review application may be considered and decide within reasonable time in accordance with law. That prayer was granted. In other words, the prayer in the writ petition for direction to Government to require it to refer the matter to Tribunal for adjudication was not pressed. Later on, it was noticed that the review application, which was filed by the writ petitioner, was already rejected a day earlier to the order passed by the High Court. Thereafter, the writ petitioner had filed second writ petition once again asking for quashing of the original order and also for direction to the Government to make reference to the Tribunal.

The learned Single Judge dismissed the second writ petition on the ground that since they had pressed into service only one relief at the time of disposal of their first writ petition, they should be taken to have abandoned other reliefs and, thus, could not be allowed to have the matter reopened. Even other reason has been recorded, which is not relevant for our purpose. Essentially, the Division Bench was impressed by this reason, but then went on to construe the relevant provision in para 5, which is reproduced earlier. With utmost respect to the learned Judges of the Division Bench of the Madhya Pradesh High Court, in such a situation, it was not necessary to dwell upon the construction of the relevant provision. Nonetheless, the learned Judges have construed the said provision and expression 'may' to read that once review option is exercised, that is the end of the matter. With respect, I am not in agreement with that view. Instead, I would prefer to adopt the view taken by the Division Bench of the Gujarat High Court in the case of Rajya General Kamdar Mandal (supra). The Gujarat High Court, after considering the similar contention in para 10

onwards, has concluded in para 14 that if the appropriate Government is not inclined to review its earlier order, it is expected to refer the matter for adjudication. In other words, rejection of prayer for review cannot be the basis to decline the remedy of reference as is provided by section 25-N(6) of the said Act, or, for that matter, to make no order on such request made by the applicant, Petitioner herein, before the authority. On the other hand, in my opinion, the authority ought to have made reference for adjudication to decide amongst others as to whether the order passed on 29th April 2003 granting permission to retrench 276 workmen of the Respondent Company in Borivli Unit is just, legal and proper and whether the application preferred by the Respondent Company dated 16th January 2003 for such relief ought to be granted or refused. In the said adjudication proceedings, it will be open to the Tribunal to examine all aspects of the matter. Such reference ought to be made because even the Third Schedule of the Act, which provides for matters within the jurisdiction of the Industrial Tribunal specifies Item No. 9 - Rationalisation

and Item No. 10 - Retrenchment of workmen and closure of establishment, and to pass such consequential orders as may be necessary. All contentions with regard to the appropriateness or necessity of the decision to retrench the concerned workmen will have to be considered by the Tribunal in the adjudication forum on the basis of the evidence that will be adduced before it on its own merits in accordance with law uninfluenced by any of the observations made by the authority, or, for that matter, in this order on merits.

13. Accordingly, this writ petition partly succeeds. The order passed by the Authority dated 29th July 2003 is modified by requiring the Authority to refer the matter for adjudication on the basis of observations made hereinbefore. The Authority to refer the matter for adjudication as expeditiously as possible, preferably within one month from the date of receipt of writ of this Court; and upon such reference being made, the Tribunal would dispose of the reference expeditiously, preferably by the end of August 2005. No order as to costs.

(A.M.KHANWILKAR, J.)